

REMARKS

I. General

The issues raised in the Office Action mailed June 3, 2005 in the instant application are as follows:

- The Office Action reminds Applicant of the proper language and form for an abstract;
- Claims 1 and 6 are objected to for informalities;
- Claims 1-7 stand rejected under 35 U.S.C. § 102(b) as anticipated by Carter, U.S. Pat. No. 5,797,412 (hereinafter *Carter*); and
- Claims 1-7 stand rejected under the judicially created doctrine of obviousness-type double patenting.

Applicant hereby traverses the outstanding rejections of the claims, and requests reconsideration and withdrawal of the outstanding rejections in light of the amendments and remarks contained herein. Claims 1-7 are currently pending in this application.

II. The Abstract

The present Office Action purports to remind Applicant of the proper language and format for an abstract of the disclosure. However, the Office Action does not point out a specific defect in the abstract. The abstract is 89 words in length and does not make use of legal phraseology, is clear and concise, and is believed to avoid using phrases that can be implied. Therefore, if the Examiner has a specific objection to the abstract, Applicant respectfully requests that such objection be pointed out in a non-final Office Action so that Applicant may have a full and fair opportunity to address it.

III. Claim Objection

Claims 1 and 6 are objected to for informalities. The Office Action suggests that various recitations of the phrase “‘L’ brackets” in claims 1 and 6 be replaced with “L-bracket.” Without conceding any defects in the claims, Applicant has amended the claims as

suggested in the Office Action in the interest of expediting prosecution of the present application. Thereby, Applicant respectfully asserts that the objections to claims 1 and 6 have been overcome.

IV. Double Patenting

Claims 1-7 stands rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-5 of U.S. Pat. No. 6,672,787. Applicant respectfully points out that the present application is a divisional application of application Serial No. 10/080,168, which issued as U.S. Pat. No. 6,672,787 on January 6, 2004. Parent application Serial No. 10/080,168 was the subject of a Restriction Requirement dated December 31, 2002, which required election between claim groups I (claims 1-6), II (claims 7-10), III (claims 13-16) and IV (claims 11-12) of application Serial No. 10/080,168. An election, without transverse, was made to prosecute the claims of group I, claims 1-6, in application Serial No. 10/080,168.

As a result of the aforementioned restriction requirement in application Serial No. 10/080,168, the present application was filed as a divisional application of Serial No. 10/080,168, on January 2, 2004. Independent claim 1 of the present divisional application corresponds to independent claim 7 (of Group II, as defined by the Examiner) of parent application Serial No. 10/080,168. Claim 1 is the only independent claims in the present application.

Therefore, Applicant respectfully asserts that, under the provisions of 35 U.S.C. § 121, the obviousness-type double patenting rejection is improper. The third sentence of 35 U.S.C. § 121 prohibits the use of a patent issuing on an application with respect to which a requirement for restriction has been made, or on an application filed as a result of such a requirement, as a reference against any divisional application, if the divisional application is filed before the issuance of the patent. See M.P.E.P. § 804.01. Therefore, the double patenting rejection of claims 1-7 should be withdrawn.

V. Rejections under 35 U.S.C. § 102(b)

Claims 1-7 are rejected under 35 U.S.C. § 102(b) as anticipated by *Carter*. Applicant respectfully traverses this rejection.

The recited reference does not teach all claimed elements.

It is well settled that to anticipate a claim, the reference must teach every element of the claim, see M.P.E.P. § 2131. Moreover, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he elements must be arranged as required by the claim,” see M.P.E.P. § 2131, citing *In re Bond*, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). Furthermore, in order for a reference to be anticipatory under 35 U.S.C. § 102 with respect to a claim, “[t]he identical invention must be shown in as complete detail as is contained in the . . . claim,” see M.P.E.P. § 2131, citing *Richardson v. Suzuki Motor Co.*, 9 U.S.P.Q.2d 1913 (Fed. Cir. 1989). Applicant respectfully asserts that the rejection does not satisfy one or more of these requirements.

The preamble of independent claim 1, recites “A mounting system for mounting a structure to a support.” The Office Action states: “Carter discloses a mounting system for mounting a structure 22 to a support 22.” Applicant is unsure whether the Office Action intends to indicate that the upper end (22) of two of *Carter*’s legs are mounted together. Therefore, Applicant requests clarification in a non final Office Action so that Applicant may have a full and fair opportunity to respond.

Claim 1 also recites “a plurality of rotatably positionable bracket assemblies, each of said bracket assemblies including a pair of L-brackets, each of the L-brackets having a first leg and a perpendicular second leg.” The Office Action indicates that *Carter* discloses “a plurality of rotatably positionable bracket assemblies 54, 130, each of the bracket assemblies including a pair of L-brackets (having a L-shaped section extending from link 54; Figure 16), each of the L-brackets having a first leg 128 and a perpendicular second leg 122, 54.” However, Applicant respectfully asserts that the “reinforcing plugs” in *Carter* (designated in *Carter* as 122) are not L-shaped and thus are not L-brackets. *Carter* describes reinforcing plugs 122 as having a forked shape, see column 6, lines 18-19. Applicant understands the Office Action to indicate that a portion of *Carter*’s reinforcing plug and the outer end 54 of one of *Carter*’s link members 52 is indicated as disclosing the second leg recited in claim 1. However, the indicated portion of reinforcing plug 122 and 54, in combination, are not perpendicular to prong 128 of *Carter*’s reinforcing plug, but rather parallel. Therefore, *Carter* also fails to teach each of the L-brackets having “a first leg and a perpendicular second leg.”

Claim 1 also recites “a rigid fastener for removably joining together the first legs of said L-brackets.” The Office Action indicates *Carter* discloses “a rigid fastener 136 for removably joining together the first legs of the L-brackets.” However, *Carter*, in column 6, lines 27-29, describes “bolts 136 hingedly connecting the inner ends of the link members for pivotal movement.” Therefore, Applicant respectfully asserts that bolt 136 is not a rigid fastener as recited by claim 1.

Claim 1 also recites “rotatable fasteners for rotatably fastening the second leg of one of said “L” brackets to said structure and for rotatably fastening the second leg of the other “L” bracket to said support.” The Office Action also indicates that *Carter* discloses:

rotatable fasteners 67 (Figure 6) for rotatably fastening the second leg of one of the L-brackets to the structure and for rotatably fastening the second leg of the other L-bracket to the support (Figures 13, 14 and 16)

As pointed out above, *Carter* fails to teach L-brackets. Therefore, *Carter* does not teach “fastening the second leg of one of said “L” brackets to said structure” or “fastening the second leg of the other “L” bracket to said support.”

For at least the foregoing reasons, Applicant respectfully asserts that *Carter* fails to teach all elements of independent claim 1, particularly arranged as required by the claims and/or in as complete detail as recited by the claim. Therefore, independent claim 1 is patentable over the 35 U.S.C. § 102 rejection of record. Furthermore, there are great differences between claim 1 and the art of record, and a person of ordinary skill in the art considering the prior art would not find these differences obvious.

Claims 2 through 7 each ultimately depend from base independent claim 1, and thus inherits all elements of claim 1. Therefore, for at least the reasons advanced above in responding to the rejection of claim 1, each of claims 2 through 7 sets forth features and elements not disclosed by *Carter*. Thus, Applicant respectfully asserts that at least for the above reasons claims 2-7 are patentable over the 35 U.S.C. § 102 rejection of record.

VI. Conclusion

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to pass this application to issue.

Applicant believes no fee is due with this response. However, if a fee is due, please charge Deposit Account No. 08-2025, under Order No. 10017979-3, from which the undersigned is authorized to draw. The Examiner is respectfully invited to call the below listed attorney if he can be of assistance in expediting prosecution of the present application.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV482712638US, in an envelope addressed to: MS Amendment, Commissioner for Patents, PO Box 1450, Alexandria, VA 22313-1450, on the date shown below.

Date of Deposit: August 29, 2005

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Respectfully submitted,

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